

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 ERIC W. ZESSMAN,
4 Petitioner,

5 vs.

6 BRIAN WILLIAMS, *et al.*,
7 Respondents.
8

Case No. 2:15-cv-00160-JAD-GWF

Order Dismissing Petition as Successive

9 Pro se prisoner Eric W. Zessman brings this petition for a writ of habeas corpus under 28
10 U.S.C. § 2254 to challenge his 2003 state-court conviction for robbery and conspiracy to commit
11 robbery.¹ Because this is Zessman's seventh habeas petition challenging this conviction, and he did
12 not get permission from the Court of Appeals before filing this successive petition as the statute
13 requires, I dismiss this case.

14 **Discussion**

15 **I. The Petition Must be Dismissed as Successive**

16 I have conducted a preliminary review of the petition under Rule 4 of the Rules Governing
17 Section 2254 Cases in the United States District Courts. A district court must dismiss a petition
18 "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to
19 relief in the district court."²

20 This case must be dismissed as an unauthorized successive petition because Zessman
21 ignored 28 U.S.C. § 2244(b), which requires that a petitioner seeking to file a "second or
22 successive" habeas petition must first obtain authorization from the federal Court of Appeals to do
23
24
25

26 ¹ ECF 1.

27 ² Rule 4 of the Rules Governing Section 2254 Cases; *see also Hendricks v. Vasquez*, 908
28 F.2d 490 (9th Cir. 1990).

so.³ This case is Zessman's seventh habeas corpus petition filed in this court, all of which I take judicial notice.⁴ His first habeas corpus action, filed as case number 2:98-cv-00530, was dismissed May 13, 2002.⁵ His second habeas action, filed as case number 2:01-cv-00382, was dismissed as unexhausted.⁶ His third habeas petition, filed as case number 2:01-cv-1273, was dismissed because his claims were not cognizable.⁷ Petitioner's fourth habeas petition, case number 2:04-cv-00274, was reviewed on the merits and denied April 27, 2005.⁸ His fifth habeas petition, case number 2:05-cv-00776, was dismissed as procedurally defaulted.⁹ Lastly, petitioner's sixth habeas petition, case number 2:15-cv-0006, was dismissed for a procedurally defective *in forma pauperis* application.¹⁰ Petitioner has not obtained authorization from the Ninth Circuit Court of Appeals to file this successive habeas petition. As a result, this court cannot entertain the petition and it will be dismissed as an unauthorized, successive petition.

II. Denial of Certificate of Appealability

I next consider whether petitioner should be granted a certificate of appealability for this dismissal. In order to proceed with any appeal, petitioner must receive a certificate of

³ See *Burton v. Stewart*, 549 U.S. 147, 157 (2007) (petitioner did not receive authorization from the federal Court of Appeals before filing a second or successive petition, so "the District Court was without jurisdiction to entertain [the petition]"); *Barapind v. Reno*, 225 F.3d 1100, 1111 (9th Cir. 2000) (noting, "the prior-appellate-review mechanism set forth in § 2244(b) requires the permission of the Court of Appeals before a second or successive habeas application under § 2254 may be commenced").

⁴ 2:98-cv-00530; 2:01-cv-00382; 2:01-cv-1273; 2:04-cv-00274; 2:05-cv-00776; and 2:15-cv-0006.

⁵ ECF 50 in 2:98-cv-00530.

⁶ ECF 10 in 2:01-cv-00382.

⁷ ECF 8 in 2:01-cv-1273.

⁸ ECF 21 in 2:04-cv-00274.

⁹ ECF 9 in 2:05-cv-00776.

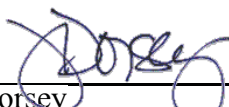
¹⁰ ECF 2 in 2:15-cv-0006.

1 appealability.¹¹ District courts are required to rule on the certificate of appealability in the order
 2 disposing of a proceeding adversely to the petitioner or movant, rather than waiting for a notice of
 3 appeal and request for certificate of appealability to be filed.¹² Generally, a petitioner must make “a
 4 substantial showing of the denial of a constitutional right” to warrant a certificate of appealability.¹³
 5 “The petitioner must demonstrate that reasonable jurists would find the district court's assessment of
 6 the constitutional claims debatable or wrong.”¹⁴ In order to meet this threshold requirement, the
 7 petitioner has the burden of demonstrating that the issues are debatable among jurists of reason; that
 8 a court could resolve the issues differently; or that the questions are adequate to deserve
 9 encouragement to proceed further.¹⁵ In this case, no reasonable jurist would find my dismissal of
 10 this successive petition debatable or wrong. I therefore deny petitioner a certificate of appealability.

11 Conclusion

12 Accordingly, with good cause appearing and no reason for delay, IT IS HEREBY
 13 ORDERED, ADJUDGED, AND DECREED that **this action is DISMISSED AS A**
 14 **SUCCESSIVE PETITION and a certificate of appealability is DENIED. The Clerk of Court**
 15 **is directed to enter JUDGMENT accordingly and close this case.**

16 Dated: December 7, 2015.

17 
 18 _____
 19 Jennifer Dorsey
 20 United States District Judge

21 _____
 22 ¹¹ 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d
 23 946, 950–951 (9th Cir. 2006); *see also United States v. Mikels*, 236 F.3d 550, 551–52 (9th Cir.
 24 2001).

25 ¹² Rule 11(a) of the Rules Governing Section 2254 and 2255 Cases.

26 ¹³ 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000).

27 ¹⁴ *Id.* (quoting *Slack*, 529 U.S. at 484).

28 ¹⁵ *Id.*